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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 WILLIAM J. GRADFORD,
12 Plaintiff,
13 v.
14 TIEXIERA; MCCARTHY,
15 Defendants.
16

Case No. 1:19-cv-01783-NONE-SKO (PC)

**ORDER DENYING MOTION TO
VACATE VOLUNTARY DISMISSAL
AND SETTLEMENT AGREEMENT IN
CASE NO. 1:17-CV-00201-DAD-GSA AND
CONSOLIDATE ACTION WITH CASE
NO. 1:17-CV-01248-DAD-GSA**

(Doc. 12)

17 Before the Court is a document titled, “Plaintiff’s request [to] reset settlement conference,
18 also all cases moved to related case 1:17-cv-01248-DAD-GSA.” (Doc. 12.) In the document,
19 Plaintiff states, “[t]his is the exact same case that was filed with the courts in ... 2017 case
20 number ... 1:17-cv-00201-DAD-GSA.” (*Id.*) In the latter case, Plaintiff and Defendants reached a
21 settlement and filed a join stipulation for dismissal on May 7, 2019. *See Gradford v. Tiexiera, et*
22 *al.*, No. 1:17-cv-00201-DAD-GSA (Doc. 87). Plaintiff seeks to “void” the settlement agreement
23 in that case, “reset” a settlement conference, and join the case and the present action with Case
24 No. 1:17-cv-01248-DAD-GSA. (*See* Doc. 12.) The Court construes Plaintiff’s filing as a motion
25 to (1) vacate the settlement agreement and voluntary dismissal in *Gradford v. Tiexiera, et al.*, No.
26 1:17-cv-00201-DAD-GSA, pursuant to Federal Rule of Civil Procedure 60, and (2) consolidate
27 this action with *Gradford v. Flores, et al.*, No. 1:17-cv-01248-DAD-GSA, currently pending
28 before the court, pursuant to Rule 42.

1 The Court DENIES Plaintiff's motion (Doc. 12). If Plaintiff seeks to vacate the voluntary
2 dismissal in Case No. 1:17-cv-00201-DAD-GSA, he must file a motion seeking relief in that case,
3 not initiate a new, identical case. In addition, the Court has issued findings and recommendations
4 to dismiss this action because it is barred by the statute of limitations. (Doc. 11.) The Court will
5 not consolidate this case with a pending case when it should instead be dismissed as time-barred
6 and duplicative. *See Cato v. United States*, 70 F.3d 1103, 1105 (9th Cir. 1995) (court may dismiss
7 "under § 1915(d) a complaint 'that merely repeats pending or previously litigated claims'")
8 (citations omitted).

9
10 IT IS SO ORDERED.

11 Dated: March 9, 2020

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE